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File No. Regis. II
Rules/42

Legal **DEPARTMENT**

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Subject:—

Papers underlying the Scrutiny

of the Bombay Registration Rules.

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C O N T E N T S.

Legal Department File No. Regis.II Rules/42.

S.No.	Compilation No.	Subject	Pages.
		B Registration Rules.	
1	U.R.to R.D.No. 7982 dt.2.10.42	Draft Rules.	1 - 9.

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Office of the R.L.A.

Revised draft rules are sent herewith.

2. The rules are made under section 69 of the Indian Registration Act, 1908. It is not appropriate to use any abbreviations in statutory rules. The list of abbreviations is, therefore, not necessary and has been omitted from the revised draft.

3. The preamble has been recast on the lines of precedents. The rules at present in force are those published in Government Notification, Revenue Department No. 1940/24 dated the 30th September 1924. Consequently, it is necessary to supersede this notification. The revised draft preamble provides accordingly.

4. As the rules are numerous, they are given a short title for facility of reference. Revised draft rule 1 provides accordingly.

5. A new rule providing for definitions of certain expressions used in the rules has been inserted in the revised draft (see rule2

6. Revised draft rule 3 corresponds to R.D. draft rule 1 sub-rule (1) of revised draft rule 3: After providing that the sub-Registrars of the Sub-Districts specified shall hold their offices during certain periods at specified out-stations, it is not necessary to provide that at such out-stations they shall receive for registration any document which may be presented for ... . /registration etc. This provisions has therefore been omitted from the revised draft.

Sub-rule (2) : During the period that the Sub-Registrar holds his office at the out-station, a clerk is to be in charge of the office at the headquarter station. It will be necessary, therefore, in the first instance for the Provincial Government under sub-section (1) of section 7 to establish in the Sub-District an office of the Joint sub-Registrar and to appoint the clerk holding charge of the office as Joint Sub-Registrar of such office during the period the Sub-Registrar is on deputation to the out-station.

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The statements below sub-rule (1) and sub-rule(2) of rule 1 of R.D. draft have been transposed as Schedules A and B respectively at the end of these rules. It is not necessary to retain column 4 of the statement below sub-rule (1) and it has therefore been omitted.

7. It has been stated that the rules have been rearranged according to the subject-matter of the clauses of section 69(1) of the Act. It however appears desirable to arrange the rules according to sequence of subject-matter. Rules ~~xxxxxxxxx~~ 17,18,32 and 33 of R.D. draft are therefore transposed as rules 4,5,6 and 7 respectively.

8. Revised draft rule 6 (R.D. draft rule 32): This rule has been revised on the lines of the amendment to the existing rule 3, furnished to the R.D. along with R.L.A's No.4420 dated the 29th May 1942. The N$.B. has been inserted as a proviso to rule 6 (b) and recast, with a view to precision.

9. Revised draft rule 8 corresponds to rule 2 of the R.D. draft. This has been recast so as to accord with the wording of section 51. The word "Form" has been substituted for the word "Appendix".

10. R.D.draft rule 12 provides for supplying the registering officers with loose sheets of forms of Indices. The provision is in the nature of an executive instruction and although based on existing rule 66, is inappropriate in the statutory rules. It has therefore been omitted.

11. R.D. draft rule 14 corresponds to the revised draft rule 18. This rule inter alia provides that a fresh numerical series of entries must be commenced each year as required by section 53. This provision is contained in section 53 and it is not necessary to repeat it in the rule. The said provision has therefore been omitted from the revised draft rule 18.

12. It would be more appropriate if Part III of the R.D. draft precedes Part II.A of the R.D.draft.

Parts II-A and III of the R.D. draft therefore have been renumbered as Parts IX and VIII, respectively, in the revised draft. The heading of Part VIII in the revised draft has been recast so as to accord with the wording of clause (a) of sub-section (1) of section 69.

13. R.D. draft rule 20 corresponds to the revised draft rule 28. The note to this rule has been omitted as being unnecessary in view of the clear wording of the sections 25 and 34 of the Act.

14. The revised draft rule 30 corresponds to R.D. draft rule 11. This rule has been transposed to Part XI under the heading "Indexes" in the revised draft so as to bring all provisions relating to Indexes in one place in that Part.

15. Parts VIII and IX of R.D. draft are outside the scope of this Act and have therefore been deleted in the revised draft.

16. Revised draft rule 40 corresponds to R.D. draft rule 35. It has been revised from the drafting point of view. The note in the R.D. draft has been omitted as being unnecessary in view of the provision made in clause (9) of revised draft rule 67.

The last paragraph in R.D. draft rule 42 provides for the the delegation of powers of the District Registrar and the Sub-Registrar of Bombay under rule 42 as well as rule 35 of the R.D. draft. This provision has, therefore, been inserted in sub-rule (2) of revised draft rule 40.

17. Revised draft rule 42 corresponds to R.D. draft rule 37. The provision contained in the last sentence of R.D. draft rule 48 has been inserted as a proviso to this revised rule 42 as the subject-matter of that provision appropriately pertains to this rule.

18. Revised draft rule 43 corresponds to R.D. draft rule 38. The provision contained in the note to the R.D. draft is a substantive provision and has, therefore, been inserted as a separate sub-rule.

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19. Revised draft rule 48 corresponds to R.D. draft rule 43. section 52 of the Act also requires registering officers to make certain endorsements on every document presented for registration. Although this section has not been mentioned either in existing rule 41 or R.D. draft rule 43, it is necessary to mention it. This has been done in revised draft rule 48 (1).

20. Revised draft rule 51 corresponds to R.D. draft rule 46 and existing rule 37-A. The R.D. draft has been split up into separate sub-rules. The rule provides, inter alia, for certain duties to be performed by the Collector of Bombay such as verifying C.S. Nos. and divisions and communicating them to the Sub-Registrar. Although the existing rule 37-A containing such provision was approved by the R.L.A. in his opinion No. 2808 dated 28th March 1938, the provision is beyond the scope of section 69 of the Indian Registration Act and has therefore, been deleted in the revised draft. Necessary executive instructions can be issued to the Collector of Bombay to achieve the object in view.

21. Revised draft rules 55 and 56 correspond to R.D. draft rules 50 and 51 respectively. The wording of the rules has been revised in conformity with the wording of section 20.

22. Revised draft rule 59 corresponds to R.D. draft rule 54. The concluding portion that a certain document shall be registered afresh without additional charge has been omitted as being outside the scope of rules under section 69. The necessary provision exempting such fresh registration from the payment of fees has been made by inserting the following as Note XI after Article 1 in the table of fees prepared by Government under section 78:-

"Note XI.- No fee shall be payable in respect of the registration of a document relating to immoveable property which has already been registered in a wrong registration office and on which the proper fee has been paid under this Article."

23. Revised draft rule 60 corresponds to R.D. draft rule 55. The provisions contained in sub-rule (5) of R.D. draft is outside the scope of the rules under section 69 and has therefore been deleted as

from the revised draft rule. The necessary provision for levying these fees has been made by the provision in Article III and inserting the following Notes after Articles, X,XIII and XXIII in the table of fees prescribed by Government under section 78, as follows, namely:-

"Article X,Note: No Fees shall be payable in respect of a duplicate or duplicates of a document presented for registration along with the original.

Article XIII, Note: No fees for making copies of documents to be forwarded to any officer under sections 65,66 & 67 shall be payable in respect of a duplicate or duplicated of a document presented for registration along with the original.

Article XXIII, Note: No fees shall be payable in respect of a duplicate or duplicates of a document presented for registration along with the original.

24. Revised draft rule 64 corresponds to R.D. draft rule 59. The reference to the levy of fees has been amplified with reference to section 78.

25. R.D. draft rule 61 has been omitted. Fees shall be levied for summonses issued under section 36 or 75 at the rates in Article XIV of the revised table of fees sent herewith. It is not therefore necessary to provide in the rules made by the I.G.R. that such fees shall be levied

Under section 75 (4) the Registrar may for the purpose of an inquiry under section 74 summon and enforce the attendance of witnesses as if he were a civil court. Under section 36, if the presence of testimony of any person is deemed necessary the registering officer may call upon such officer or court as the Provincial Government directs in this behalf to issue a summons for the purpose. The necessary directions should therefore be issued by the Provincial Government as to what officer or court the registering officers should call upon to issue summonses and then the I.G.R. should x issue the necessary executive x

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necessary executive instructions to the registering officers concerned. No rule for the purpose is necessary.

26. Revised draft rule 67 corresponds to R.D. draft rule 63.

Note 1 under clause (6) (iii) is not clear. Perhaps it may be recast as follows :-

"All notes made under this rule shall be signed and dated by the Sub.registrar."

Clause (12) is outside the scope of the rules under section 69 and has therefore been omitted from the revised draft. The necessary provision has been made by inserting a new Article XXVI in the table of fees prepared by Government under section 78 as follows, namely:-

"XXVI.. In the case of an instrument of which the executant is an agriculturist within the meaning of the Deccan Agriculturies' Relief Act, 1879, and which is not completely executed and registered after the fee for the same has been paid, one half of such fees and all the copying fee shall be refuded."

27. Revised draft rules 68 and 69 correspond to R.D. draft rules 65 and 64. R.D. draft rule 64 provides that the fees received during the day shall be kept by the registering officer till the next day and paid into the nearest Treasury as soon as it opens. Ther R.D. draft rule 65 provides that the fees received for registration etc. shall be remitted daily to the nearest Treasury.
Obviously, there is some confusion in the R.D. draft rules. Existing rule 16 provides that the fees received after the hour at which the Treasury into which payments have to be made closes, shall be kept by the Registering Officer till the next day and then paid into the Treasury along with the receipts for that day.
Presumably that is the intention of the R.D. and revised draft rules 68 and 69 have been drafted accordingly.

28. Revised draft rule 72 corresponds to R.D. draft rule

68. The provisions of sub-rule(1) of R.D. draft and the opening portion of Sub-rule (2) have been omitted and have been embodied in the forms of authentication and attestation.

29. Revised draft rule 74 corresponds to R.D.draft rule 70. The provisions of sub-rule (1) in R.D.draft are outside the scope of this rule under section 69 and have therefore been omitted from the revised draft. The necessary provisions has been made by inserting a new Article XXVII in the table of fees to be prepared under section 78 by Government, as follows:-

" XXVII. One half of the registration fee and all the copying fees in respect of a document presented for registration which is withdrawn before the order for registration has been passed and in respect of a document of which registration is finally refused shall be refunded."

As the note to sub-rule (1) in the R.D. draft provides that no refund of the fine is to be granted except under section 70, no provision is necessary to be made. The discretion given by section 70 to the Inspector General will be vested in him automatically and he can exercise it without any provision being made either in the rules or in the table of fees.

The provision contained in the second para of sub-rule (1) of R.D. draft is not also necessary, as no refund is to be granted for the fees mentioned therein. The only provision that remains in R.D. draft rule 70 is for the maintenance of a register of refund of fees by a registering officer. Revised draft rule 74 provides accordingly.

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30. Revised draft rule 78 corresponds to R.D. draft rule 74. This rule provides that every Registrar shall, if possible, examine the Sub-Registrars' Offices in his district. The words "if possible" appear to leave room for evasion and have been omitted. The rule appears to be incoplete inasmuch as it does not provide the period requiring the Registrar to inspect the offices periodically. The R.D. may consider if the rule may not prescribe the period for holding such inspection (cf.rule 79 under which Books, Accounts, etc. have to be examined once every year.

31. Form P.- Reserve of this form provides for schedule of other fees. Items at serial Nos. 14,15 and 16 cannot be said to be fees. Perhaps the words "and other payments" may be inserted after the words "schedule of other fees" on the reverse and the words "and payments" may be inserted after the words "other fees" on the obverse and the words "or other amounts" may be inserted after the words "of any fee or fine" in sub-rule (1) of rule 44.

Item at serial No.13 viz. sale proceeds of dead stock articles cannot be said to be any fee; nor can it be said to be an amount which is recoverable from the registering public. The item is inappropriate in the schedule and may be omitted.

32. Table of fees. A revised preamble is appended.

33. In N.B.(i) below note IV, Article I, the words "standard printed forms shall be supplied gratis" have been omitted as being inappropriate in the table of fees to be prepared under section 78. The necessary executive instruction could be issued in the matter.

34. Note XI to Article I has been inserted as explained in para 22 above.

35. Note XII has been inserted at the end of Article I in view of the R.L.A.'s opinion No.4613 dated the 4th. June 1942.

36. N.B. below Article IV has been omitted as being inappropriate in the table of fees prescribed under section 78. The necessary executive instruction could be issued in the matter. A note has been added below Article X as explained in para 23 above.

37. A note has been added below Article XXIII as explained in para 23 above.

38. A note has been added below Article XXIII as explained in para 23 above.

39. New Articles XXVI and XXVII have been inserted as explained in paras 26 and 29 above and Article XXVI in R.D. draft has been renumbered as Article XXVIII.

Id/- P.N.Menon.
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Remembrancer of Legal Affairs.

U.R. to R.D. No.7982 dated the 2nd October 1942.

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